



ZW
AF

PATENT APPLICATION
Mo-6805
LD-99-88-PU

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | |
|------------------------------|---|----------------------|
| APPLICATION OF |) | |
| |) | GROUP NO.: 1733 |
| ULRICH HOLESCHOVSKY ET AL |) | |
| |) | |
| SERIAL NUMBER: 10/028,897 |) | EXAMINER: J.T. HARAN |
| |) | |
| FILED: DECEMBER 18, 2001 |) | |
| |) | |
| TITLE: A PROCESS TO LAMINATE |) | |
| POLYOLEFIN SHEETS TO |) | |
| URETHANE |) | |

REPLY BRIEF

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief is submitted to rebut certain arguments raised by the Examiner in the Examiner's Answer dated January 10, 2005.

The Examiner states for the first time in the Examiner's Answer at page 12, first full paragraph, lines 1-4 thereon; and on page 19, second full paragraph, lines 1-4, therein that:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an enveloped addressed to: Commissioner for Patents, Alexandria VA 22313-1450 3/4/05
Date

N. Denise Brown, Reg. No. 36,097
Name of applicant, assignee or Registered Representative

N. Denise Brown
Signature
March 4, 2005
Date

“[I]n addition regardless of why Irwin teaches treating the film with corona discharge one skilled in the art would have readily appreciated that the power density would depend upon a variety of factors such as the material of the film, the material it is to be bonded with, etc.” (Emphasis original.)

It is respectfully submitted by Appellants that this statement suggests that an Examiner can combine any two or more references in any manner they chose to, with total and complete disregard for the express disclosure of the reference(s). This is clearly improper.

Appellants submit that **why** Irwin (or any other reference for that matter) teaches or discloses something such a “treating the film with corona discharge” can indeed be relevant to the issue of patentability. It is improper for the Examiner to simply ignore why the reference does what it describes and the manner it proceeds! This is frequently relevant to whether or not it is proper to combine two or more references as the “why” may expressly “teach” against such a combination. It may also be relevant as to what one of ordinary skill in the art can “reasonably” expect or believe after reading the reference(s) and combining them.

The Examiner also states in the Answer dated January 10, 2005 at page 12, 2nd full paragraph, lines 4-5 therein; at page 14, 1st full paragraph, lines 4-5 therein; in the paragraph bridging pages 19-20 that:

“[T]his argument makes it evident that Appellants clearly do not understand the rejection of the claims.”

Appellants fully understand the “rejection of the claims”. It is respectfully submitted by Appellants that they simply disagree with the Examiner’s “rejection of the claims”. Accordingly, Appellants have stated their position as to what these combinations of references disclose and/or suggest to one of ordinary skill in the art when considered in combination with one another.

It is respectfully noted by Appellants that the Examiner’s comments concerning the “rejection of the claims” are simply his position about what the references disclose to the skilled artisan. Furthermore, it is noted by Appellants that in some instances, the Examiner’s comments are merely his opinion. **Appellants**

respectfully submit that the Examiner's opinion is not relevant or pertinent to patentability! The issues are to be determined on the basis of what (if anything) the reference(s) disclose or suggest to one of ordinary skill in the art. It is readily apparent from some comments made by the Examiner that he is **not** one of ordinary skill in the art.

The Examiner has stated at page 13, 1st full paragraph, lines 1-6 therein and at page 20, 2nd full paragraph, lines 1-6 therein, that:

“[A]ppellants go to great lengths to argue that the specific facts of Takizawa et al, Strobel et al, Hinterwaldner et al, and Gastiger et al are not applicable to the present invention. However, Appellants miss the point that they were merely optionally cited as additional support for the assertion that it is notoriously well know and conventional that corona discharge treating a surface increases its adhesive properties (improves adherence by increasing the wettability of the film).”

It is respectfully submitted that Appellants are required to provide a full response to the rejection as stated by the Examiner. It is essential that Appellants fully address each and every reference cited in the rejection as stated by the Examiner. Failure to do so by Appellants could be construed as either (1) Appellants filing a non-responsive brief, or (2) Appellants acquiescing on that issue or issues. Accordingly, Appellants have not “missed the point” as stated by the Examiner!

Rather, Appellants are addressing the issues raised and position presented by the Examiner, and simply presenting their position with regard to the cited references and what (if anything) these disclose and/or suggest to one of ordinary skill in the art. If the Examiner does not want specific references to be addressed by Appellants, then he should restate the rejection of the claims such that the Takizawa et al, the Strobel et al, the Hinterwaldner et al and the Gastiger et al references are no longer part of the rejection!

With regard to Appellants claims, the Examiner has stated at pages 15-16, paragraph bridging those pages; and on page 21, 1st full paragraph, lines 5-8 therein that:

“[H]owever, **the claims do not exclude having a secondary backing or recite a limitation of increased**

dimensional stability and no unexpected results or other secondary considerations sufficient to overcome the rejections have been provided.” (Emphasis original.)

Appellants respectfully submit that this statement suggests that the Examiner believes that unexpected results are irrelevant unless they are expressly claimed. This is clearly improper.

It is a well established that unexpected results are not required to appear in the claims. The purpose of the claims is to point out distinctly the process, machine, composition, etc., which is being patented. Advantages, unexpected results, etc., do not belong in the claims! It is respectfully submitted by Appellants that it is irrelevant that the present are silent with respect to increased dimensional stability. The increased dimensional stability is inherent in the invention as claimed! Thus, it is improper for this improvement to be ignored simply because it is not expressly claimed!

The Examiner’s statement on page 16, 1st full paragraph, lines 2-4 therein, that:

“[T]he method of Irwin as modified with the teachings of Nohr et al and Langsdorf would result in a carpet as disclosed in option (2) noted by Appellants on page 5 of the Appeal Brief.”

It is Appellants understanding that the reference to “option (2)” in the above statement is on page 5, 2nd full paragraph, lines 6-7 therein of Appellant’s Appeal Brief. Assuming this is correct, this specific portion of Appellants’ Appeal Brief clearly states that the Irwin et al reference discloses that the carpets therein may comprise one of three embodiments. Option (2) identified by Appellants as being within the scope of the Irwin et al reference was further described therein as a carpet comprising a primary backing with tufted yarn, a precoat, a film of an impervious material and a secondary backing. Appellants disagree with the Examiner that the “method of Irwin as modified by the teachings of Nohr et al and Langsdorf would result” in this carpet. Appellants position with regard to what the combination of the Irwin et al reference with the Nohr et al and the Langsdorf et al reference suggests

to one of ordinary skill in the art is as discussed in their Brief on page 7, line 1 through page 8, 1st full paragraph.

Furthermore, even if this combination results in a carpet as disclosed in option (2) described by Appellants in their Brief on page 5, the presently claimed invention is directed to a process for producing a tufted good. Thus, patentability of the tufted good is **not** an issue here.

The Examiner stated on page 17, 1st full paragraph, lines 3-9 therein, that:

“[I]t is unclear what the distinction is between a secondary backing and a flexible film. It appears from the specification that they can be one and the same. The specification describes the flexible film as a polyolefin sheet (page 3, line 14) including polypropylene (page 7, line 16). The polypropylene substrate of Langsdorf is a sheet and it is clearly flexible since it is provided wound up in a supply roll (Column 3, lines 44-45). **The polypropylene substrate (secondary backing) in Langsdorf meets the requirements of being a flexible film.**” (Emphasis original.)

It was further stated by the Examiner on page 21, 1st full paragraph, last sentence therein, that:

“[A]lso as noted above the secondary backing of Langsdorf is taken as being synonymous with the flexible film of claim 25.”

These statements make it evident that the Examiner is **not** a person of ordinary skill in the art. The above statements appear to be based on the Examiner’s misconception that if two objects are composed of the same or similar starting materials, they must be the same object. This is akin to stating that:

“[S]ince a wooden table and a wooden chair are both composed of wood, they are the same object, and such objects are thus, interchangeable.”

The error of such a statement is self-evident.

Appellants respectfully submit that it is simply the Examiner’s opinion that a polypropylene flexible film is the same as a polypropylene secondary backing. There is no **factual basis** for this statement. Furthermore, the skilled artisan would “obviously” consider this statement to be wrong!

It is respectfully submitted that the Examiner's opinion is not only incorrect, it is also irrelevant to patentability of the presently claimed invention! The proper issue to be considered is how one of ordinary skill in the art would interpret these references and what one of ordinary skill in the art would reasonably expect by combining the disclosures of these references.

One of ordinary skill in the art, in the field of carpet backing, would clearly know and understand the difference between a secondary backing and a flexible film. This is true even when/if both the secondary backing and flexible film are made of polypropylene. It is well established that patent applications are to be directed to one of ordinary skill in the art. Thus, it is not necessary that an Applicant for a patent explain or define terms or words that are well known and/or have a commonly accepted meaning as used throughout the field that the patent application is directed to.

It is generally well accepted in the field of chemistry that a film is a thin, continuous sheet of a substance. If a film is not continuous, it is of little value as a film since it can not act as an efficient barrier to, e.g. atmospheric water. Appellants respectfully submit that one of ordinary skill in the art in the field of carpet backing would know, accept and understand this meaning of the term "film".

The skilled artisan would also know and understand that a "secondary backing" as used throughout the present specification and the various references cited by the Examiner, is generally a open weave type element in which the so-called "fibers" may comprise polypropylene fibers. The "open weave" nature of secondary backings is readily apparent from the express disclosure of the Irwin, Sr. reference. At column 1, lines 17-20 of U.S. Patent 5,612,112, it is expressly stated that:

"[T]he majority of carpets are backed with a latex and a secondary backing which may be jute, but substantially more frequently with a woven polypropylene having spun or fibrillated fibers which adhere to latex."

This same (Irwin, Sr.) reference at column 2, lines 62-65, further describes the secondary backing as:

"... a woven material such as polypropylene having a course weave and thus a very open structure for reasons of economics." (Emphasis added.)

Appellants respectfully submit that it is readily apparent from the Irwin Sr. reference that the Examiner's "interpretation" of a flexible film and a secondary backing as being "synonymous" is clearly incorrect! Accordingly, any rejection of the presently claimed invention which requires this incorrect interpretation of the meaning of these terms is also incorrect, and therefore, improper!

For these reasons and those discussed at length in their Appeal Brief, Appellants maintain their position that the Examiner's rejections are improper. Appellants respectfully request that these rejections be reversed and that Claims 15-18, 20-25 and 27-30

Respectfully submitted,

By 

N. Denise Brown
Agent for Appellants
Reg. No. 36,097

Bayer MaterialScience LLC
100 Bayer Road
Pittsburgh, Pennsylvania 15205-9741
(412) 777-3804
FACSIMILE PHONE NUMBER:
(412) 777-3902
s:\shared\kgb\db1966reply